THE BOMBAY LOCAL FUND AUDIT ACT, 1930.

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BOMBAY ACT No. XXV OF 1930.[1]

[THE BOMBAY LOCAL FUND AUDIT ACT, 1930.]

[*17th September 1930.*]

Adapted and modified by the Adaptation of Indian Laws Order in Council.
Amended by Bom. 12 of 1949.

An Act to provide for and regulatethe audit of the local funds under the management or control of certain local authorities in the Bombay Presidency except the City of Bombay.

WHEREAS it is expedient to provide for and regulate the audit of the local funds under the management or control of certain local authorities in the Bombay Presidency except the City of Bombay in manner hereinafter appearing; And whereas the previous sanction of the Governor General required by sub-section (*3*) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows:—

5 & 6 Geo. V, c. 61.

1. This Act may be called the Bombay Local Fund Audit Act, 1930. Short title.

2. This Act extends to the whole of the Bombay Presidency except the City of Bombay. Extent.

3. In this Act, unless there is anything repugnant in the subject or context— Definitions.

(*a*) "Auditor" means the Examiner or any other person empowered by [2][the Provincial Government] to perform the functions of an auditor under this Act.

[3][(*aa*) 'Chairman' means the president or chairman of the local authority and includes in the case of a dissolved or superseded local authority, the person or persons lawfully appointed to exercise the powers and perform the duties of such local authority;

(*ab*) 'Detailed audit' means an audit of accounts for the whole year;]

(*b*) "Examiner" means the Examiner of Local Fund Accounts and includes the Assistant Examiner of Local Fund Accounts.

Bom. I of 1904.

(*c*) "Local authority" means a local authority as defined in clause (26) of section 3 of the Bombay General Clauses Act, 1904, and includes a school board constituted under the [4]Bombay Primary Educaton Act, 1923.

Bom. IV of 1923.

(*d*) "Local Fund" means any fund to the control or management of which a local authority is legally entitled and includes the proceeds of any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

[5][(*e*) 'Special audit' means an audit of accounts pertaining to a specified item or series of items requiring thorough examination.

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1930, Pt. V, pp. 45-49; for Report of Select Committee, *see ibid* 1930, Pt. V, pp. 116-121; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1930, Vols. XXVIII and XXIX.

[2] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[3] These clauses were inserted by Bom. 12 of 1949, s. 2 (*1*).

[4] See now the Bombay Primary Education Act, 1947 (Bom. 61 of 1947).

[5] This clause was added, *ibid*, s. 2 (*2*).

Liability of local authorities to submit their accounts for audit.

4. The accounts of any local authority whose accounts are declared by [1][the Provincial Government], by a notification in the [2][*Official Gazette*], to be subject to audit under this Act shall, notwithstanding anything contained in any enactment by which such local authority is constituted or in any rules made thereunder be subject to audit in all respects in the manner provided by or under this Act.

Accounts to be submitted for audit at such period or periods as may be required.

5. [3][The Chairman] of every local authority, whose accounts are declared under section 4 to be subject to audit under this Act, shall present or cause to be presented for audit all accounts of its local fund in the manner and form prescribed by rules under section 15 to the auditor yearly or at such period or periods as may be required by the Commisioner.

Power of auditor to require production of documents and attendance of persons concerned, etc.

6. (*1*) For the purpose of any audit under this Act, an auditor may—

[4][(*a*) require in writing the production at the head office of the local authority of such vouchers, statements, returns, correspondence, notes or other documents in relation to the accounts as he may think fit;]

(*b*) require in writing any salaried servant of the local authority accountable for, or having the custody or control of [5][such vouchers, statements, returns, correspondence, notes or other documents] or any person having directly, indirectly, by himself or his partner, any share or interest in any contract with or under the local authority to appear in person before him at the head office of the local authority, and answer any question;

(*c*) in the event of an explanation being required from the [6] * chairman or other honorary officer or member of a local authority, in writing invite such person to meet him at the head office of the local authority and shall in writing specify the point on which his explanation is required.

(*2*) The auditor may, in any requisition or invitation made under sub-section (*1*), fix a reasonable period, not being less than three days [7][in the case of a District Local Board or of a Municipality constituted under the Bombay Municipal Boroughs Act, 1925], within which the said requisition or invitation shall be complied with. Bom. XVIII of 1925.

(*3*) The auditor shall give to the local authority not less than two weeks' notice in writing of the date on which he proposes to commence the audit.

[8][Provided that, notwithstanding anything contained in this sub-section, the auditor may, for special reasons which shall be recorded in writing, give shorter notice than two weeks or commence a special or detailed audit on the authority of the Commissioner or the Examiner without giving notice.]

Penalty for disobeying requisition under section 6.

7. (*1*) Any person who wilfully neglects or refuses to comply with any requisition lawfully made upon him under clause (*a*) or clause (*b*) of sub-section (*1*) of section 6 shall be liable, on conviction before a Magistrate, to a fine which may extend to one hundred rupees:

Provided that no proceedings under this section shall be instituted except on the written sanction of the Commissioner:

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[1] The words "the Provincial Government" were substituted for the words "the Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

[3] These words were substituted for the original by Bom. 12 of 1949, s. 3.

[4] This clause was substituted for the original *ibid.*, s. 4.

[5] These words were substituted, *ibid.*

[6] The word "president" was deleted, *ibid.*

[7] These words were inserted, *ibid.*

[8] This proviso was added, *ibid.*

Provided further that before giving such sanction the Commissioner shall call upon the person against whom the proceedings are to be instituted to show cause why the sanction should not be given.

(*2*) No court inferior to that of a Magistrate of the first class shall try any offence against this Act.

Audit report to be sent to certain officers and bodies as Provincial Government may direct.

8. [1][As soon as practicable after the completion of the audit, but not later than three months thereafter,] the Examiner shall prepare a report on the accounts audited and examined and shall send such report to the local authority concerned and copies thereof to such officers and bodies as [2][the Provincial Government] may direct.

Audit report what to contain.

9. The Examiner shall include in his report a statement of—

(*a*) every payment which appears to him to be contrary to law,

(*b*) the amount of any deficiency or loss which appears to have been caused by the gross negligence or misconduct of any person,

(*c*) the amount of any sum received which ought to have been but is not brought into account by any person, and

(*d*) any material impropriety or irregularity which he may observe in the accounts other than those mentioned in clauses (*a*), (*b*) and (*c*) above.

Local authority to remedy defects: Procedure to be followed after report of the Examiner under section 8.

10. [3][(*1*) On receipt of a report under section 8, the chairman shall remedy any defects or irregularities which may have been pointed out in the report, and shall place the report, together with a statement of the action taken or proposed to be taken thereon and an explanation in regard thereto before a meeting of the local authority. He shall also, within three months of the receipt of the report, send to the Examiner intimation of his having remedied the defects or irregularities, if any, pointed out in the report, or shall, within the said period, supply the Examiner any further explanation in regard to such defects or irregularities as the local authority may wish to give.]

(*2*) On receipt of such intimation or explanation the Examiner may, in respect of all or any of the matters discussed in his report,

(*a*) accept the intimation or explanation given by the [4]* * chairman and withdraw the objection, or

(*b*) direct that the matter be re-investigated at the next audit or at any earlier date, or

(*c*) hold that the defects or irregularities pointed out in the report or any of them have not been removed or remedied.

(*3*) The Examiner shall send a report of his decision to the Commissioner within one month of the date of the receipt by him of the intimation or explanation of the [4]* * chairman referred to in sub-section (*1*) or in the event of the [4]* * chairman failing to give such intimation or explanation, on the expiry of the period of three months mentioned in the said sub-section and shall forward a copy of such report to [5][the chairman]. If the Examiner holds that any defects or irregularities have not been removed or remedied he shall state in the report whether, in his opinion, the defects or irregularities can be regularised and if so, by what method;

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[1] These words were substituted, by Bom. 12 of 1949, s. 4.

[2] The words "the Provincial Government" were substituted for the words "the Government" by the Adaptation of Indian Laws Order in Council.

[3] This sub-section was substituted for the original by Bom. 12 of 1949, s. 6.

[4] The words "president or" were deleted, *ibid.*

[5] These words were substituted for the original, *ibid.*

and if they do not admit of being regularised, whether they can be condoned and, if so, by what authority. He shall also state whether the amounts to which the defects or irregularities relate should, in his opinion, be surcharged or charged :

Provided that in the case of reports on the accounts of school boards and of such local authorities as are specially notified by [1][the Provincial Government] in this behalf the report referred to in this sub-section shall be submitted by the Examiner to such officer, being the head of a department, as [1][the Provincial Government] may direct. Such officer shall take such action as may be necessary regarding any defects or irregularities falling under clause (*c*) of sub-section (*2*) which may have been brought to notice in the report. If he is of the opinion that the amounts to which any such defects or irregularities relate should be surcharged or charged, he shall forward the report of the Commissioner together with his recommendation in that behalf.

(*4*) The local authority concerned shall publish in its next administration report, such portions of the report under section 8 as deal with defects and irregularities falling under clause (*c*) of sub-section (*2*), together with the explanation thereof, if any, given under sub-section (*1*) and the final report of the Examiner thereon under sub-section (*3*). Such report of defects and irregularities, explanation and final report shall be open to the inspection of the public at the office of the local authority for a period of one month from the date of their receipt and shall also be published in the [2][regional language] of the district in any newspaper circulating in the district selected by the local authority within one month of the receipt by it of the copy of the report sent to the Commissioner under sub-section (*3*).

(*5*) If [3][the chairman] fails to give the intimation or explanation referred to in sub-section (*1*) within the period therein mentioned the Commissioner may, at the instance of the Examiner, publish in the [2][regional language] of the district the whole of the Examiner's report under section 8, together with any observations which the Commissioner may make thereon, in any newspaper circulating in the district which the Commissioner may select and the cost of such publication shall be [3][forthwith paid by the local authority concerned. If such cost is not so paid, the Commissioner may make an order directing any person, who for the time being has custody of any moneys on behalf of the local authority, as its officer, treasurer, banker or otherwise, to pay the amount of such cost from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order. Every payment made pursuant to such order shall be sufficient discharge to such person from all liability to the local authority in respect of any amount paid by him out of the moneys of the local authority so held by him.]

(*6*) Nothing in this section or in section 9 shall preclude the Examiner at any time from bringing to the notice of the Commissioner, for such action as the Commissioner may consider necessary, any information which appears to the Examiner to support a presumption of criminal misappropriation or fraud [4][or which in his opinion deserves special attention or immediate investigation].

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[1] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[2] These words were substituted for the word "vernacular" by Bom. 12 of 1949, s. 6.

[3] These words were substituted for the original, *ibid.*

[4] These words were added, *ibid.*

Commissioner to surcharge or charge illegal payment or loss caused by gross negligence or misconduct.

11. (*1*) The Commissioner may, after considering the recommendation of the Examiner or of any head of a department under the proviso to sub-section (*3*) of section 10, as the case may be, and after taking the explanation of the person concerned, or making such further inquiry, as he may consider necessary, disallow any item which appears to him to be contrary to law and surcharge the same on the person making, or authorizing the making of, the illegal payment; and may charge against any person responsible therefor the amount of any deficiency or loss caused by the gross negligence or misconduct of that person, or, any sum received which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such person :

Provided that no order of surcharge or charge shall be made under this Act in respect of any item included, or, which ought to have been included in, but was omitted from, any accounts for any period prior to the 1st April 1930.

(*2*) The Commissioner shall state in writing the reasons for his decision in respect of every surcharge or charge and shall send by registered post a copy thereof to the person against whom it is made.

(*3*) If a person to whom a copy of the Commissioner's decision is sent under sub-section (*2*) refuses to take delivery thereof he shall be deemed to have duly received it on the day on which it was refused by him.

Recovery of surcharges and charges how made.

12. (*1*) Every sum certified by the Commissioner to be due from any person under sub-section (*1*) of section 11 shall be paid by such person into the treasury or bank in which the funds of the local authority concerned are lodged, within one month from the receipt by him of the decision of the Commissioner, unless within that time such person has applied to the Court or to [1][the [2][State] Government] as provided in section 13.

(*2*) The said sum, if not duly paid, or if an application has been made to the Court or to [1][the [2][State] Government] against the decision of the Commissioner as provided in sub-section (*1*) of section 13, such sum as the Court or [1][the [2][State] Government] shall declare to be due, shall be recoverable, on an application made by the Collector to the Court, in the same way as an amount decreed by the Court in favour of the Collector.

Application against order of surcharge or charge.

13. (*1*) Any person aggrieved by any order of surcharge or charge made by the Commissioner under sub-section (*1*) of section 11 may, within one month from the receipt by him of the decision of the Commissioner, either—

(*a*) apply to the District Court to set aside such order; and the Court, after taking such evidence as it thinks necessary, may confirm, modify or remit such surcharge or charge and make such orders as to costs as it thinks proper in the circumstances; or

(*b*) in lieu of such application apply to [1][the [2][State] Government] which shall pass such orders thereon as it thinks fit.

(*2*) Pending disposal of the application all proceedings on the certificate shall be stayed if the person aggrieved makes out a *prima facie* case for a stay order.

[1] The words "the Provincial Government" were substituted for the words "the Government" by the Adaptation of Indian Laws Order in Council.
[2] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

Expenses in respect of requisitions of auditors to be payable out of local fund.

14. All expenses incurred by a local authority in complying with any requisition of an auditor under sub-section (*1*) of section 6 shall be payable out of its local fund.

Rules.

15. (*1*) [1][The [2][State] Government] may make rules not inconsistent with this Act, for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely :—

(*a*) the manner and form in which the accounts of a local authority, whose accounts are subject to audit under this Act, shall be kept and presented ;

(*b*) the powers and duties of auditors and the procedure to be followed by them for conducting an audit and the times at which such audit may be conducted; and

(*c*) the manner in which all matters required to be published under this Act shall be published.

(*3*) The making of rules under this section shall be subject to the condition of previous publication. Such rules shall be laid [3][before each [1][House] of the [2][State] Legislature] for one month previous to the next session thereof and shall be liable to be rescinded or modified [5][by a Resolution in which both [4][Houses] of the Legislature concur]. If any rule is modified, [6][the [2][State] Government] may accept the modification and re-issue the rule accordingly, or, may rescind the rule.

16. [*Amendments made by section 16 have been incorporated in the principal Acts.*]

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[1] The words "the Provincial Government" were substituted for the words "the Government" by the Adaptation of Indian Laws Order in Council.

[2] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

[3] The words "before each Chamber of the Provincial Legislature" were substituted for the words "on the table of the Bombay Legislative Council" by the Adaptation of Indian Laws Order in Council.

[4] The words "House" and "Houses" were substituted for the words "Chamber" and "Chambers" respectively by the Adaptation of Laws Order, 1950.

[5] These words were inserted by the Adaptation of Indian Laws order in Council.

[6] The words "the Provincial Government" were substituted for the word "Government", *ibid.*